

UNITED STATES OF AMERICA  
UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

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VVQ LAND HOLDINGS, LLC, a Michigan  
Limited Liability Corporation, and  
THOMAS J. MOYLE, JR., INCORPORATED  
d/b/a VALLEY VIEW QUARRY, a Michigan  
Corporation,

Plaintiffs,

Case No. 2:11-cv-213

v.

Honorable R. Allan Edgar

THE CHARTER TOWNSHIP OF PORTAGE,  
a Michigan Municipal Corporation,

Defendant.

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**ORDER APPROVING AND ADOPTING**  
**MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

On July 22, 2011, United States Magistrate Judge Timothy P. Greeley issued a report and recommendation ("R&R") [Doc. No. 17] recommending that Plaintiffs' motion for a temporary restraining order, or alternatively a show cause order and request for a preliminary injunction [Doc. No. 3] be denied. Magistrate Judge Greeley further recommended that Plaintiffs' claims be dismissed without prejudice because of the *Younger* abstention doctrine and also due to a lack of ripeness for adjudication by this Court. Plaintiffs filed an objection to the R&R on August 5, 2011. Doc. No. 19.

This Court is required to make a *de novo* determination of those specified portions of the R&R to which objections have been made, and may accept, reject, or modify any or all of the Magistrate Judge's findings or recommendations. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). Plaintiffs state

an objection to the R&R as based on the reasoning set forth in their initial motion and reply briefs. [Doc. No. 19.] As this objection fails to include the specific proposed findings or recommendations within the R&R that Plaintiffs are objecting to, it is improper. See 28 U.S.C. § 636(b)(1). The Court is therefore not required to and will not respond to it.

Plaintiffs own property in Portage Township, Houghton County, Michigan, which they have used for mining, aggregate and gravel operations. Doc. No. 3, p. 2. Prior to their purchase of the property, the Portage Township Board had zoned it for rural-residential development, which did not provide for gravel or mineral extraction. Doc. No. 5, Exhibit 12, p. 9. A zoning variance had been granted to Plaintiffs, and, Plaintiffs allege, “points of consensus” were subsequently reached to allow mining operations to continue. Doc. No. 3, pp. 3-4. In August 2010, the Portage Township Board voted to shut down mining operations on the property, and the Township (the Defendant in this federal suit) filed a complaint for a nuisance abatement against Plaintiffs in Houghton County Circuit Court. Doc. No. 5, Exhibit 12. The circuit court granted summary judgment for the Township. Doc. No. 5, Exhibit 12, p. 11. Plaintiffs filed applications for leave to appeal to the Michigan Court of Appeals, and that appeal is still pending. Doc. No. 12, Exhibit S. Plaintiffs filed a Takings claim, a 14th Amendment claim and an estoppel claim in this Court based on the Township’s actions regarding their mining operation. Complaint, Doc. No. 1.

This Court agrees with Magistrate Judge Greeley’s determination that Plaintiffs’ claims are not ripe for review in this court, due to Plaintiffs’ failure to exhaust its state court remedies. This Court further agrees that Plaintiffs’ claims should be dismissed under the *Younger* abstention doctrine. The sufficient similarity of the ongoing state court proceeding that is discussed in the R&R is further illustrated by the Plaintiffs’ statement in their R&R objection that, “in light of the parties on going settlement discussions with respect to a state court case,” they believe that a dismissal

without prejudice would be appropriate. Doc. No. 19, p. 1. Given this statement, it would appear that even Plaintiffs recognize the similarities between the two suits.

Finally, the Court agrees that, even if it were not dismissing Plaintiffs' claims, Plaintiffs' motion for a temporary restraining order or a preliminary injunction should be denied, as Plaintiffs have not shown a substantial likelihood of success on the merits.

It is ordered that Plaintiffs' objection to the R&R [Doc. No. 19] is OVERRULED. It is further ordered that Magistrate Judge Greeley's July 22, 2011 R&R [Doc. No. 17] is APPROVED and ADOPTED as the opinion of the Court. Plaintiffs' claims are DISMISSED WITHOUT PREJUDICE in their entirety. A separate judgment will be issued in accordance with this Order.

SO ORDERED.

Dated: September 8, 2011

/s/ R. ALLAN EDGAR  
R. ALLAN EDGAR  
UNITED STATES DISTRICT JUDGE